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**EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

14 **PEOPLE OF THE STATE OF
15 CALIFORNIA,**

16 Plaintiff,

17 v.

18 **PACIFIC AMERICAN FISH COMPANY,
19 INC., RHEE BROS, INC., CLEARWATER
20 SEAFOODS INCORPORATED,
SEAQUEST SEAFOOD CORPORATION,
21 JAYONE FOODS, INC., AND DOES 1-50,**

22 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

[VERIFIED ANSWER REQUIRED
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE SECTION 446]

23 Plaintiff, the People of the State of California by and through Xavier Becerra, Attorney
24 General of the State of California, hereby alleges:
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I. INTRODUCTION

1. This complaint seeks to remedy the defendants’ failure to protect consumers from highly toxic chemicals that are present in fresh and frozen packaged seafood, and their failure to warn consumers about the risks these products pose. The products include, but are not limited to, packaged fresh and frozen whole or cuts of clam, cuttlefish, eel, goby fish, krill, mussel, octopus, oyster, periwinkle, sea squirt, sillago, silverfish, snail, and squid (“Products”). They contain lead and cadmium, exposing Californians to dangerous heavy metals in the seafood they consume.

2. Lead exposure in children, who are particularly vulnerable to lead’s toxic effects, can cause behavior issues, lowered IQ, slowed body growth, hearing problems, and kidney damage. Exposure in adults leads to increased risk of high blood pressure and kidney damage, and adversely affect male reproductive systems. Exposure in pregnant women can cause miscarriage, stillbirth, premature birth, and low birth weight.

3. Cadmium exposure can cause damage to liver, lungs, male reproductive systems, and kidneys, and long-term exposure can lead to decreased bone density that increases the risk of bone fractures, and may also cause lung, prostate, and kidney cancer.

4. The sale of the Products without warnings to consumers in California violates important state laws intended to protect consumers from exposure to dangerous chemicals, and to inform them of the risks that exposure to these chemicals cause.

II. PARTIES

5. Plaintiff is the People of the State of California. Plaintiff brings this action by and through the Attorney General of California, Xavier Becerra (“Attorney General”).

6. The Attorney General is the chief law officer of the State and has the authority to file civil actions in order to protect the public interest. (Cal. Cont., art. V, § 13; Cal. Bus. & Prof. Code, § 321.) Further, the Attorney General may bring actions in the name of the People of the State of California to prohibit unfair and unlawful business practices (Bus. & Prof. Code, § 17204) and enforce Proposition 65 (Health & Saf. Code, § 25249.7, subs. (b) & (c)).

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7. The State of California has an interest in promoting the health of its residents. To that end, California seeks to reduce or eliminate the sale of seafood products containing lead and/or cadmium to consumers in California without warnings.

8. Defendant Pacific American Fish Company, Inc. (“PAFCO”), is a corporation organized and existing under the General Corporation Law of the State of California. PAFCO is a person within the meaning of Health and Safety Code section 25249.11 (Proposition 65) and Business and Professions Code section 17201 (unlawful and unfair business practices). PAFCO has approximately 300 employees and operates sales offices in Los Angeles and San Francisco, as well as a main distribution center in Vernon, California. PAFCO offers for sale more than 3,000 products, including fresh and frozen fish; owns and manages fishing vessels, harvest sites, and processing plants throughout the world; and oversees all phases of production of seafood brands such as Oceankist, Pacific Surf, and PAFCO. PAFCO sells, holds, and/or delivers seafood products, including, but not limited to, Oceankist Squid Tentacle, Pacific Surf Carved Squid, Pacific Surf Squid Loligo, Baby Cuttlefish, Cooked Oyster, Bluelip Mussel, Baby Octopus, Eel Chunks, Baby Clam Meat, Snail Meat, Periwinkle Meat, Sillago, Silverfish, Garlic Butter Mussels, and Baby Clam with Garlic Butter, to consumers in California.

9. Defendant Rhee Bros, Inc. (“Rhee Bros”), is a corporation organized and existing under the General Corporation Law of the State of Maryland. Rhee Bros is a person within the meaning of Health and Safety Code section 25249.11 and Business and Professions Code section 17201. Rhee Bros has approximately 200 employees, and offers for sale over 4,000 products, including refrigerated and frozen seafood. Rhee Bros carries private brands such as Wild Sea, Three Elephants, and Viet Way, as well as international brands such as Orion, Nongshim, Dongwon, and Kikkoman. Rhee Bros sources many of its products from Asia and distributes them to retail chains such as Costco Wholesale, Weis, and Wegmans; restaurant chains such as P.F. Chang’s, Pei Wei, Momofuku, and Bibibop Asian Grill; and food service companies such as Blue Apron and Chef’s Warehouse. Rhee Bros sells, holds, and/or delivers seafood

1 products, including, but not limited to, File Fish, Squid Stir-Fry, Shredded Squid, Sliced Squid,
2 Cooked Mussel Meat, and Cooked Half-Shell Mussel, to consumers in California.

3 10. Defendant Clearwater Seafoods Incorporated (“Clearwater”) is a corporation
4 organized and existing under the Canada Business Corporations Act, and based in Nova Scotia,
5 Canada. Clearwater is a person within the meaning of Health and Safety Code section 25249.11
6 and Business and Professions Code section 17201. Clearwater has approximately 1,900
7 employees in offices, distribution and processing facilities, and harvesting vessels around the
8 world. Clearwater provides delivery to consumers worldwide, and maintains a webpage targeting
9 consumers in United States by offering direct purchase and delivery of products. Clearwater
10 supplies products under the Clearwater brand as well as private label brands to wholesalers, food
11 service distributors, and retailers, including Whole Foods. Clearwater sells, holds, and/or delivers
12 seafood products, including, but not limited to, Arctic Surf Clams and White Cockle Clams, to
13 consumers in California.

14 11. Defendant Sequest Seafood Corporation (“Sequest”) is a corporation
15 organized and existing under the General Corporation Law of the State of California. Sequest is
16 a person within the meaning of Health and Safety Code section 25249.11 and Business and
17 Professions Code section 17201. Sequest has approximately 20 employees and operates
18 approximately three processing, importing, and wholesale distribution facilities, including a
19 processing and distribution facility in the City of Industry, California. Sequest offers for sale
20 approximately 200 finfish, shellfish, and mollusk products and nine brands, including Sunrise and
21 Pacific Marina. Sequest sells, holds, and/or delivers seafood products, including, but not limited
22 to, Pacific Marina Gourmet Seafood Mix, Baby Clam Meat, Top Snail with Coconut Juice,
23 Periwinkle Meat, Goby Fish, Pre-Sliced Baby Cuttlefish Roll, Whole Baby Cuttlefish, Whole
24 Baby Octopus, Frozen Loligo Squid Tentacles, Frozen Krill, and Whole Cooked Farm Raised
25 Clams, to consumers in California.

26 12. Defendant Jayone Foods, Inc. (“Jayone Foods”), is a corporation organized and
27 existing under the General Corporation Law of the State of California. Jayone Foods is a person
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1 within the meaning of Health and Safety Code section 25249.11 and Business and Professions
2 Code section 17201. Jayone Foods has approximately 50 employees and offers for sale more
3 than 700 food products, including its own manufactured foods and packaged foods supplied from
4 its partners. Jayone Foods operates a food factory in Paramount, California, and sells its products
5 via retailers such as 99 Ranch, Albertson's, Costco, Ralph's, Safeway, Sam's Club, Sprouts,
6 Target, and Whole Foods, as well as independent Asian retailers. Jayone Foods sells, holds,
7 and/or delivers seafood products, including, but not limited to, Frozen Oysters, Clams, Cooked
8 Clams, Roasted Filefish, Hard Shell Clams, Cooked Mud Snail, Salted Hairtail Fish, and
9 Boneless Yellow Croaker, to consumers in California.

10 13. Defendants DOES 1 through 50 are business entities engaged in the offering for
11 sale, sale, holding, delivery, and distribution of the Products. As part of their business activities,
12 each of the Does 1 through 50 causes persons in California to be exposed to lead and/or cadmium
13 contained in the Products. Does 1 through 50 also cause those exposures to occur without
14 providing a clear and reasonable warning prior to such exposures. The true names and capacities
15 of the defendants sued herein as Does 1 through 50 are unknown to plaintiff, who therefore sues
16 them by such fictitious names. Plaintiff will amend this complaint to allege the true names and
17 capacities of these defendants when they have been determined. Each of the fictitiously named
18 defendants is responsible in some manner for the conduct alleged herein.

19 14. Whenever reference is made in this complaint to "Defendants," such reference,
20 unless otherwise specified, includes the defendants named in paragraphs 8 through 13.
21 References made to one or more specifically identified defendants do not include defendants not
22 identified within the same reference.

23 **III. JURISDICTION**

24 15. This Court has jurisdiction pursuant to California Constitution Article VI,
25 section 10 because this case is a cause not given by statute to other trial courts.

26 16. This Court has jurisdiction over Defendants because Defendants named above
27 are business entities that do sufficient business in California, or otherwise have sufficient
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1 minimum contacts in California, to render the exercise of jurisdiction over them by California
2 courts consistent with traditional notions of fair play and substantial justice.

3 17. Venue is proper in this Court because this cause, or part thereof, arises in the
4 County of Alameda wherein one or more Defendants' products are sold, consumed, or available
5 for purchase.

6 **IV. STATUTORY BACKGROUND**

7 **A. The Proposition 65 Warning Requirement**

8 18. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative
9 statute passed as "Proposition 65" by a vote of the People in November of 1986.

10 19. The warning requirement of Proposition 65 is contained in Health and Safety
11 Code section 25249.6, which provides:

12 No person in the course of doing business shall knowingly and intentionally
13 expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to
15 such individual, except as provided in Section 25249.10.

16 20. Proposition 65 establishes a procedure by which California, through its
17 Governor or his or her designee, develops and maintains a list of chemicals "known to the State to
18 cause cancer or reproductive toxicity." (Health & Saf. Code, § 25249.8.) A warning concerning
19 a listed chemical must be given beginning one year after the chemical first appears on the list.
20 (*Id.*, § 25249.10, subd. (b).)

21 21. Proposition 65 regulations provide that a warning is deemed to be "clear and
22 reasonable" if the name of the chemical is included in the warning, and the warning is
23 "prominently displayed on a label, labeling, or sign [. . .] with such conspicuousness as compared
24 with other words, statements, designs or devices on the label, labeling or sign, as to render the
25 warning likely to be seen, read, and understood by an ordinary individual under customary
26 conditions of purchase or use." (Cal. Code Regs., tit. 27, § 25601.)

27 22. Actions to enforce Proposition 65 may be brought by the Attorney General in
28 the name of the People of the State of California, or by any district attorney or certain city

1 attorneys. (Health & Saf. Code, § 25249.7, subd. (c).) Proposition 65 provides that any person
2 “violating or threatening to violate” the statute may be enjoined in any court of competent
3 jurisdiction. (*Id.*, § 25249.7, subd. (a).) Violators are liable for civil penalties of up to \$2,500 per
4 day for each violation. (*Id.*, § 25249.7, subd. (b).)

5 23. Private parties have authority to enforce Proposition 65 “in the public interest”
6 if the private party first provides written notice of a violation to the alleged violator, the Attorney
7 General, and other designated public prosecutors in whose jurisdiction the alleged violation
8 occurs. (*Id.*, § 25249.7, subd. (d).) If no public prosecutor commences enforcement within 60
9 days, then the private party may sue. (*Id.*)

10 24. In an action by the Attorney General, the Attorney General may “seek and
11 recover costs and attorney’s fees on behalf of any party who provides a notice pursuant to
12 subdivision (d) and who renders assistance in that action.” (*Id.*, § 25249.7, subd. (j).)

13 **B. The Unfair Competition Law**

14 25. California Business and Professions Code section 17200 provides that “unfair
15 competition shall mean and include any unlawful, unfair or fraudulent business act or practice....”
16 Section 17203 of the Business and Professions Code provides that “[a]ny person who engages,
17 has engaged or proposes to engage in unfair competition may be enjoined in any court of
18 competent jurisdiction.” Actions for relief under the Unfair Competition Law may be prosecuted
19 by the Attorney General in “a court of competent jurisdiction....” (Bus. & Prof. Code, § 17204.)

20 26. Section 17206, subdivision (a) of the Business and Professions Code provides
21 that “[a]ny person who engages, has engaged, or proposes to engage in unfair competition shall
22 be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each
23 violation, which shall be assessed and recovered in a civil action brought in the name of the
24 people of the State of California by the Attorney General, [or] by any district attorney”
25 These penalties are “cumulative to each other and to the remedies or penalties available under all
26 other laws of this state.” (*Id.*, §17205.)
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V. FACTS

27. Lead is a reproductive toxicant and carcinogen and can affect people of any age or health status. Lead is especially harmful to infants, young children, pregnant women and their fetuses, and people with chronic health conditions. Short-term overexposure to lead can cause anemia, nausea, vomiting, liver and kidney damage, neurological effects, high blood pressure, miscarriage, infertility in men and women, and death. High levels of lead exposure can seriously harm children's health and development, specifically the brain and nervous system. Lead exposure in a pregnant woman can harm the developing brain of the baby, resulting in diminished intelligence and learning and behavioral problems in the child. Similarly, effects of lead exposure during early childhood include learning and behavioral disabilities. Because lead can accumulate in the body, even low-level chronic exposure can be hazardous over time. Prolonged exposure to lead may increase the risk for high blood pressure, heart disease, stroke, kidney disease, and reduced fertility.

28. Childhood exposure to lead is of particular concern. California has passed legislation to protect children from lead exposure. California declared childhood lead exposure the most significant childhood environmental health problem in the state (Health & Saf. Code, §§ 123125-124165); issued broad mandates on lead screening and reduction of exposures (*id.*, §§ 105275-105310); currently prohibits manufacture, sale, or exchange of toys with high lead content (*id.*, §§ 108550-108580); and limits the amount of lead in candies or candy wrappers (*id.*, § 110552).

29. The Office of Environmental Health Hazard Assessment (“OEHHA”) is the State of California’s lead agency for implementing Proposition 65, and is the agency in charge of listing chemicals under Proposition 65.

30. OEHHA listed lead under Proposition 65 as a chemical known to cause reproductive toxicity on February 27, 1987. (Cal. Code Regs., tit. 27, § 27001, subd. (c).)

31. OEHHA listed lead and lead compounds under Proposition 65 as a chemical known to cause cancer on October 1, 1992. (*Id.*, § 27001, subd. (b).)

1 32. Cadmium is a reproductive toxicant and carcinogen and can affect people of
2 any age and health status. Short term exposure to high levels of cadmium can cause stomach
3 irritation, abdominal cramps, nausea, vomiting, diarrhea, headaches, flu-like symptoms, and
4 swelling of the throat. Exposure to high levels of cadmium can cause damage to the testes and
5 sperm, liver, kidneys, and heart, and in severe cases may cause death. Pregnant women exposed
6 to high levels of cadmium may have pre-term labor or give birth to infants diagnosed as “small
7 for dates.” Exposure during pregnancy can also adversely affect the development of fetal brain,
8 bones, and immune system. Exposure to high levels of cadmium during prenatal development
9 can be associated with malformations.

10 33. OEHHA listed cadmium under Proposition 65 as a chemical known to cause
11 reproductive toxicity on May 1, 1997. (*Id.*, § 27001, subd. (c).)

12 34. OEHHA listed cadmium and cadmium compounds under Proposition 65 as a
13 chemical known to cause cancer on October 1, 1987. (*Id.*, § 27001, subd. (b).)

14 35. Each of the Defendants has received notices from one or more private enforcers
15 pursuant to Health and Safety Code section 25249.7, subdivision (d)(1), alleging that one or more
16 of their Products exposes individuals to lead and/or cadmium.

17 36. Defendants know and have known that their Products contain lead and/or
18 cadmium.

19 37. Defendants know and have known that California consumers who purchase the
20 Products they sell are exposed to lead and/or cadmium, and that California consumers who
21 purchase the Products they sell are exposed to lead and/or cadmium through ingestion of the
22 Products.

23 38. Defendants have intentionally sold the Products without providing a clear and
24 reasonable warning that the Products contain lead and/or cadmium.

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VI. FIRST CAUSE OF ACTION

FAILURE TO WARN

(Violations of Proposition 65)

39. Plaintiff realleges and incorporates herein by reference all paragraphs above as though set forth herein.

40. Defendants each employs ten or more persons.

41. Each Defendant is a “[p]erson in the course of doing business” as that term is used in Health and Safety Code section 25249.6 and 25249.11, subdivision (b).

42. By committing the acts alleged above, each Defendant has, in the course of doing business, knowingly and intentionally exposed individuals to lead—a chemical known to the State of California to cause reproductive harm and cancer—and/or cadmium—a chemical known to the State of California to cause reproductive harm—without first giving a clear and reasonable warning to such individuals within the meaning of Health and Safety Code section 25249.6.

43. Said violations render each defendant liable to plaintiff for civil penalties of up to \$2,500 per day for each violation, and provide the basis for other remedies.

VII. SECOND CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(Violations of Business and Professions Code Sections 17200 et seq.)

44. Plaintiff realleges and incorporates herein by reference all paragraphs above as though set forth herein.

45. Defendants have engaged, and continue to engage, in acts or practices that are unlawful, unfair, or fraudulent, and which constitute unfair competition within the meaning of Section 17200 of the Business and Professions Code. These acts or practices include, but are not limited to, violating Proposition 65 as alleged in the First Cause of Action.

46. By committing the acts alleged above, Defendants are liable to plaintiff for civil penalties of up to \$2,500 for each violation.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

(1) Pursuant to the First and Second Causes of Action, grant civil penalties according to proof;

(2) Pursuant to Health and Safety Code section 25249.7 and other applicable laws, enter such preliminary injunctions, permanent injunctions, or other orders as Plaintiff shall specify in further application to the court prohibiting Defendants, and their successors, agents, representatives, employees and all persons who act in concert with them, from exposing persons within the State of California to lead and/or cadmium in seafood products without providing clear and reasonable warnings;

(3) Pursuant to Health and Safety Code section 25249.7, subdivision (b)(1), that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Health and Safety Code section 25249.6, as proved at trial;

(4) Pursuant to Business and Professions Code section 17203, that the Court make such orders or judgments necessary to prevent the use or employment by Defendants, along with Defendants' successors, agents, representatives, employees, and all persons who act in concert with Defendants, of any practice which constitutes unfair competition, as proved at trial;

(5) Pursuant to Business and Professions Code section 17203, that the Court enter all orders or judgments as may be necessary to restore to any person in interest any money or other property which may have acquired by means of unfair competition, as proved at trial;

(6) Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of Business and Professions Code section 17200, as proved at trial;

(7) Award Plaintiff its cost of suit; and

(8) Grant such other and further relief as the court deems just and proper.

1 Dated: December 28, 2020

Respectfully Submitted,

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